

# Free movement of European workers

## Focus on Estonia and Finland

Tallinn, 16 September 2011

**‘The new developments and efforts of  
the European Union in the free  
movement of workers’**

**Jitka Hrudová**  
[jitka.hrudova@ec.europa.eu](mailto:jitka.hrudova@ec.europa.eu)

European Commission  
DG Employment,  
Social Affairs and Inclusion



# Over 40 years free movement of workers



- One of four fundamental freedoms
- EU migrant worker ↔ EU citizen



# Recent Commission documents on free movement of workers



- Commission Communication “Reaffirming the free movement of workers: rights and major developments”

COM(2010)373 final, 13.7.2010

<http://ec.europa.eu/social/main.jsp?catId=457&langId=en>

- Commission Staff Working Document “Free movement of workers in the public sector”

SEC(2010) 1609 final, 14.12.2010

<http://ec.europa.eu/social/main.jsp?catId=465&langId=en>



# Recent reports on free movement of workers



- Reports of the Network of Experts on Free Movement of Workers
  - Annual European Reports
  - Report on the application of Regulation 1612/68
  - Report on Follow-up of case-law
  - Obstacles to free movement of young workers

<http://ec.europa.eu/social/main.jsp?catId=475&langId=en>
- Report of Prof. Ziller on “Free Movement of European Union Citizens and Employment in the Public Sector”

<http://ec.europa.eu/social/main.jsp?catId=465&langId=en>



# Free movement of workers



EU citizens have the right to work and live in another EU Member State without being discriminated against on grounds of nationality

- Article 45 TFEU
- Regulation 492/2011 on free movement of workers
- Directive 2004/38 on residence rights of EU nationals and their family members
- Directive 2005/36 on the recognition of qualifications
- Regulations 883/2004 and 987/2009 on the coordination of social security schemes (applicable since 01.05.2010)



# Who can benefit from EU law on free movement of workers?



## EU migrant workers:

**Any person who undertakes genuine and effective work for which he is paid under the direction of someone else (66/85 Lawrie-Blum)**

### Includes:

- Professional and semi-professional sportsmen
- Civil servants and public sector employees

### Other beneficiaries:

- Family members
- Jobseekers
- People retaining the status of worker



# Cross-border link



- Person must be a migrant worker:
  - Work in another Member State than country of origin
  - Reside in one Member State and work in another Member State (“frontier workers”) (Meints C-57/96)
    - Includes residence in another Member State and work in Member State of origin (Hartmann C-212/05)
  - Returning migrant worker: who has exercised right to free movement as a worker and then returns to country of origin (Singh C-370/90)



# Transitional Periods



- Transitional measures foreseen in Treaties of Accession
- Aim: to allow MS to gradually introduce EU law on FMOW to avoid labour market disturbances through sudden inflow of workers
- Applicable to 8 of 10 MS of 2004 enlargement (except Cyprus and Malta) as well as to MS of 2007 enlargement (Bulgaria and Romania)
- 7 years maximum « formula 2+3+2 »
  - 2 years: national measures
  - 3 years: application of restrictions can be prolonged
  - 2 years: restrictions only if serious disturbances of the labour market
- Time frame
  - Enlargement 2004: 01.05.2004 – 30.04.2011
  - Enlargement 2007: 2007-2013





# Transitional Periods



- National EU 2 Member State who is legally working in an EU 15 or EU 10 Member State with a work permit of at least 12 months at the date of accession or later can stay in that Member State and has free access to the labour market of that State.
- Right to equal treatment in relation to working conditions and social advantages
- Restrictions on certain service provision involving cross-border movement of workers, only into Germany and Austria
- Standstill clause from date of signature of Accession Treaty



# What are core rights of free movement of workers?



- Right to look for a job in another Member State
- Right to work in another Member State
- Right to equal treatment:
  - Access to employment
  - Working conditions
  - All other advantages that can help to facilitate the worker's integration in the host Member State



# Right to look for a job in another Member State



- Receive same assistance from national employment office as nationals of that Member State (Article 5 Regulation 492/2011)
- Right to reside in Member State for job-seeking during first 6 months  
(Recital 9 Directive 2004/38, Antonissen C-292/90)
- Right to reside for more than 6 months: if Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged  
(Article 14(4) Directive 2004/38, Antonissen C-292/90)



# Rights of jobseekers



- Equal treatment with nationals as regards access to employment
- Equal treatment with nationals as regards access to benefits 'of a financial nature intended to facilitate access to employment on the labour market of the host Member State'
  - If there is a genuine link between jobseeker and geographic employment market (reasonable period of job-seeking; proportionate residence criterion)
  - Exception of Article 24(2) Directive 2004/38 does not apply to financial benefits to facilitate access to the labour market

(Collins C-138/02, Ioannidis C-258/04, Vatsouras C-22/08)



# Equal treatment in access to work



Equal treatment in access to work (Article 3(1) Regulation 492/2011)  
language requirements

- Reasonable and necessary for the job
- Employers cannot request only one specific qualification as proof
- Employers must not require a mother tongue level

## Exception

- access to posts in the public sector may be restricted to own nationals (Article 45(4) TFEU)
  - Restrictive interpretation: only posts involving direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interest of the State (Commission v. Belgium 149/79)



# Equal treatment in access to work

## Recognition of professional qualifications



- Directive 2005/36/EC on the recognition of professional qualifications for the right to exercise a regulated profession in another Member States
- Report on transposition – October 2010
- Evaluation of Directive 2005/36 ongoing
  - Public consultation 01-03/2011, public hearing 02/2011, study on impact of more recent educational reforms ongoing
  - Evaluation Report and Green Paper –autumn 2011
  - Legislative proposal 2012
  - Also introduction of 'European professional card' is planned



# Equal treatment in access to work Taking into account of qualifications



- Directive 2005/36/EC not concerned
- Diplomas sometimes play a role in the recruitment procedure e.g. additional points awarded
- Comparable qualifications acquired in other Member States must be taken into account in the same way as qualifications acquired in the host Member State



# Equal treatment in access to work

## Recognition of professional experience and seniority



- Comparable working periods acquired in other Member States must be taken into account in the same way as working periods acquired in the host Member State during the recruitment process
- Jurisprudence e.g. Scholz C-419/92
- Concerns in practice mostly posts in the public sector, but same principle applies for access to posts in the private sector





# Equal treatment



- No direct or indirect discrimination (Article 45 TFEU)
- No obstacles (Article 45 TFEU)
- Same working conditions (Article 7(1) Regulation 492/2011)
- Same social and tax advantages (Article 7 (2) Regulation 492/2011)



# Equal treatment as regards working conditions



## Recognition of professional experience and seniority

- Comparable working periods acquired in other Member States must be taken into account in the same way as working periods acquired in the host Member State to determine the working conditions (e.g. salary; grade)
- Jurisprudence e.g. Schöning C-15/96; Öst. Gewerkschaftsbund C-195/98; Köbler C-224/01
- Concerns in practice mostly posts in the public sector, but same principle applies for determining the working conditions for posts in the private sector



# Equal treatment as regards working conditions



## Taking into account of qualifications

- Qualifications sometimes play a role for determining the working conditions (e.g. salary; career perspectives)
- Comparable qualifications acquired in other Member States must be taken into account in the same way as qualifications acquired in the host Member State
- Concerns in practice in particular public sector posts, but sometimes also private sector posts



# Equal treatment – social advantages



- Definition (C-85/96 Martinez Sala):

*All advantages, whether or not linked to a contract of employment, that are generally granted to national workers primarily because of their objective status as workers, or by virtue of the mere fact of their residence on the national territory, and the extension of which to workers who are nationals of other Member States seems likely to facilitate their mobility within the EU.*

- Financial (minimum subsistence, child-raising allowance, study grants, public transport fare reductions for large families) and non-financial (legal proceedings in specific language)



# Residence rights



- Directive 2004/38: brings together previous rules
- Distinction economically active – non-active EU citizens
- Same rules for residence up to 3 months: no formalities, only ID
- Residence for period of more than 3 months:
  - Migrant workers may be asked to register
  - family members have right to reside with the worker and to take up an economic activity
  - Permanent residence after 5 years of uninterrupted lawful residence
  - Permanent residence after shorter period (Article 17)



# Further rights of family members



- Right to work, Article 23 of Directive 2004/38
- Children of migrant workers, regardless of their nationality, have the right to education in the host Member State, Article 12 Regulation 492/
  - includes an independent right to reside for children,
  - Includes right to reside of primary carer of such child,  
[C-413/99 Baumbast, C-310/08 Ibrahim and C-480/08 Teixeira]
- Access to social advantages:
  - Includes study grants
  - No residence conditions
  - No previous periods of residence required



# Commission action in relation to residence rights



- Report from the Commission on the application of Directive 2004/38; COM(2008)840 final
- Guidelines on better transposition and application of Directive 2004/38; COM(2009)313
- Transposition control still ongoing
- EU Citizenship Report 2010 –Dismantling the obstacles of EU citizens' rights; COM(2010)603 final
- 'Freedom to move and live in Europe – A Guide to your rights as an EU citizen'

[http://ec.europa.eu/justice/policies/citizenship/docs/guide\\_free\\_movement.pdf](http://ec.europa.eu/justice/policies/citizenship/docs/guide_free_movement.pdf)



# Efforts to improve enforceability of the rules on free movement of workers



- Commission aims to promote and enhance the correct application of the rules on free movement of workers in practice
  - 2011: "Report on the Application of Regulation 1612/68" by the Network of Experts (MS and social partners comment)
  - Public consultation (June 2011)
  - Impact Assessment - which will also take into account the outcome of the public consultation –until end 2011
  - Proposal envisaged for mid-2012





# EU actions in other fields related to the free movement of workers



- An Agenda for New Skills and Jobs (COM(2010) 682 final -DG EMPL)
- EU Citizenship Report 2010 (COM(2010)602 final -DG JUST)
- Single Market Act (COM(2011)206/4 -DG MARKT)
- Youth on the Move (COM(2010)477 final -DG EAC)
- Green Paper on the European Workforce for Health (COM(2008)725 final) and Action Plan on Health Professionals planned for 2012 (DG SANCO)



# More information



- Websites
  - Free movement of workers  
<http://ec.europa.eu/social/main.jsp?catId=457&langId=en>
  - EUR-lex (legislation and case law)  
<http://eur-lex.europa.eu/en/index.htm>
  - EURES –European Job Mobility Portal
    - –practical information and job data base
    - <http://ec.europa.eu/eures/home.jsp?lang=en>
  - Your Europe
    - [http://ec.europa.eu/youreurope/citizens/index\\_en.htm](http://ec.europa.eu/youreurope/citizens/index_en.htm)

